

CHAPTER E-5

Electric Power Act

Chapter Outline

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acquire — acquérir	
compulsory power — pouvoir coercitif	
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energy, power — énergie	
land — biens-fonds	
owner — propriétaire	
price — prix	
property — biens	
works — ouvrage	
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1 In this Act

"acquire" includes take, expropriate, and purchase, irrespective of whether the acquisition by the Corporation be of its own volition, or pursuant to an obligation created or imposed upon it by, or under a statutory enactment or any contract;

"Commission" Repealed: 1991, c.59, s.1.

"compulsory power" includes the taking, entering upon, flooding, or overflowing of land without the consent of the owner thereof;

"Corporation" means the New Brunswick Power Corporation;

"energy", "power", includes electricity, gas, steam and by-products resulting from the generation of power;

"land" includes any estate, term, easement, right or interest in, to, or affecting land;

"owner" includes a mortgagee, lessee, tenant, occupant, person entitled to a limited estate or interest, and a guardian, executor or trustee in whom land or any interest therein is vested;

"price" means the compensation payable for any property acquired by the Corporation;

"property" includes land, works and personal property of every nature and kind whatever or interest therein;

"works" includes plant, tunnels, machinery, installations, materials, devices, fittings, apparatuses, appliances and equipment, constructed, acquired or utilized, or useful in the development of water power and any means for the generation, transformation, transmission, transportation, distribution, delivery, supply or use of power.

1961-62, c.41, s.1; 1966, c.51, s.1; 1970, c.19, s.1; 1991, c.59, s.1.

2 The intent, purpose, and object of this Act is to provide for the continuous supply of energy adequate for the needs and future development of the Province and to promote economy and efficiency in the generation, distribution, supply, sale, and use of power.

1961-1962, c.41, s.2.

3(1) The body corporate established under the name The New Brunswick Electric Power Commission is hereby continued under the name New Brunswick Power Corporation which shall be a body corporate with head office at the City of Fredericton, consisting of those persons who from time to time comprise the board of directors.

3(1.1) Repealed: 1991, c.59, s.2.

3(1.2) The change in the name of the Corporation does not affect the rights and obligations of the Corporation and all proceedings may be continued or commenced by or against the Corporation under its new name that might have been continued or commenced by or against the Corporation under its former name.

3(1.3) The board of directors shall be composed of

(a) the President of the Corporation, and

(b) ten directors who shall be appointed by the Lieutenant-Governor in Council.

3(2) The Lieutenant-Governor in Council shall designate one of the directors appointed under subsection (1.3) to be the Chairman of the board of directors and another to be the Vice-Chairman of the board of directors.

3(3) Four members of the board of directors, one of whom is either the Chairman or the Vice-Chairman of the board of directors, constitute a quorum.

3(4) The directors of the Corporation shall hold office for a period not exceeding five years, as specified in the appointment, or until prior death, resignation or removal from office by Order of the Lieutenant-Governor in Council.

3(5) The Lieutenant-Governor in Council, upon the death, resignation, termination of term of office or removal from office of any director, may appoint some other person in his place.

3(6) The Lieutenant-Governor in Council, in case of absence, illness or incapacity to act of any director, may appoint a substitute for any such director for the period of such absence, illness or incapacity.

3(7) The board of directors shall administer the affairs of the Corporation on a commercial basis and all decisions and actions of the board of directors are to be based, subject to public policy as determined from time to time by the Lieutenant-Governor in Council, on sound business practice.

1961-62, c.41, s.43; 1970, c.19, s.2; 1973, c.74, s.30; 1977, c.19, s.1; 1985, c.11, s.1; 1991, c.59, s.2; 1993, c.55, s.1.

4(1) The Chairman and the Vice-Chairman of the board of directors and the other directors of the Corporation shall be paid such salary or other remuneration and expenses out of the funds of the Corporation as the Lieutenant-Governor in Council may determine.

4(2) Repealed: 1991, c.59, s.3.

4(3) Repealed: 1991, c.59, s.3.
1961-62, c.41, s.4; 1991, c.59, s.3.

5 The Corporation is and has always been a Crown Corporation and an agent of the Crown and the property of the Corporation is the property of the Crown, but shall be held in the name of the Corporation and may be disposed of, or otherwise dealt with by the Corporation.

1961-62, c.41, s.5; 1991, c.59, s.4.

POWERS

6 Repealed: 1991, c.59, s.5.
1977, c.19, s.2; 1991, c.59, s.5.

6.1(1) The Lieutenant-Governor in Council shall, upon the recommendation of the board of directors, appoint a President of the Corporation and a Chief Executive Officer of the Corporation.

6.1(1.1) The Lieutenant-Governor in Council may, on the recommendation of the board of directors, designate the President of the Corporation or the Chairman of the board of directors to act as the Chief Executive Officer of the Corporation.

6.1(2) The Chief Executive Officer of the Corporation is, subject to the direction of the board of directors, charged with the general direction, supervision and control of the business of the Corporation and may exercise such other powers as may be conferred on the Chief Executive Officer by the by-laws of the Corporation.

6.1(3) The President is an *ex officio* member of the board of directors.

6.1(4) The President of the Corporation and the Chief Executive Officer of the Corporation shall hold office at the pleasure of the Lieutenant-Governor in Council.

1991, c.59, s.6; 1993, c.55, s.2.

6.2 The employees of the Corporation shall be appointed in accordance with the staff requirements and mode of appointment established by the by-laws of the Corporation and such by-laws shall conform, so far as possible, with the spirit and intent of the *Civil Service Act* regarding the method and procedure followed in the appointment process.

1991, c.59, s.6.

6.3 The Corporation may, subject to the approval of the Lieutenant-Governor in Council, make by-laws.

1991, c.59, s.6.

7 Except as otherwise provided in this Act, the Corporation shall have all rights, powers and privileges conferred upon a company by the provisions of the *Companies Act* and for the purposes of this Act may do all and any acts or things that are necessary or deemed by the Corporation to be advisable for or incidental to the performance, execution or carrying out of any duty, power or function, including, subject to section 6.3, the passing of such by-laws and resolutions as the Corporation may from time to time deem advisable.

1961-62, c.41, s.7; 1991, c.59, s.7.

7.1(1) A director of the Corporation may in any manner waive a notice of a meeting of the Corporation and attendance of a director at a meeting of the Corporation is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

7.1(2) Notice of an adjourned meeting of the Corporation is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

7.1(3) A director of the Corporation may participate in a meeting of the Corporation or of a committee of the Corporation by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other and a director participating in a meeting by those means shall be deemed for the purposes of this Act to be present at that meeting.

7.1(4) Notwithstanding any other provision of this Act, a resolution in writing signed by all directors of the Corporation or signed counterparts of such resolution by all the directors entitled to vote on that resolution at a meeting of the Corporation or a committee of the Corporation is as valid as if it had been passed at a meeting of the Corporation or a committee of the Corporation duly called, constituted and held.

1985, c.11, s.2; 1991, c.59, s.8.

8 The Corporation shall not enter into any contract with Her Majesty in the right of Canada or in the right of any province of Canada or with any foreign state or country except with the approval of the Lieutenant-Governor in Council.

1961-62, c.41, s.8; 1991, c.59, s.9.

9(1) Subject to this and any other Act, and unless some other period of employment is specified, the tenure of office of an officer or employee of the Corporation is for an indefinite period, and no officer or employee shall be dismissed except for cause or if the position and nature of the employment are no longer required in the management of the Corporation's affairs.

9(2) Subject to the grievance provisions contained in the *Public Service Labour Relations Act*, the Corporation may suspend for a period not exceeding two months, any officer or employee who, in its opinion, has been guilty of misconduct or negligence in the performance of his duties, and no officer or employee shall receive any salary or other remuneration for the time or any part of the time, during which he is under suspension.

1961-62, c.41, s.10; 1977, c.19, s.3; 1991, c.59, s.10.

10(1) The *Public Service Superannuation Act* applies to the permanent employees and officers of the Corporation and the Corporation shall deduct monthly from the salary of every permanent

employee and officer such amounts as are directed under that Act to be deducted from the salary of every such person and shall pay over the same to the Minister of Finance, which amounts when so received forms part of the Superannuation Fund.

10(2) Where under the *Public Service Superannuation Act* any payment is directed to be made by the Minister of Finance to such fund, then in respect of any employee or officer of the Corporation such payment or sum shall be defrayed by the Corporation and shall form part of the operating expense of the Corporation.

10(3) The provisions of the *Public Service Superannuation Act* apply to all employees of the Commission for whom contributions are being made to the Superannuation Fund as of April 15, 1962 and who are not designated permanent employees hereunder.

1961-62, c.41, s.11; O.C.67-164; 1970, c.19, s.18; 1991, c.59, s.11.

11 The Lieutenant-Governor in Council may raise, by way of loan in the manner provided by the *Provincial Loans Act*, such sums as the Lieutenant-Governor in Council may deem requisite for the purposes of this Act and the sums so raised may either be advanced to the Corporation or applied by the Minister of Finance in the purchase of notes, bonds, debentures or other securities issued by the Corporation under the authority of this Act.

1961-62, c.41, s.12; 1991, c.59, s.12.

12 When the Legislative Assembly appropriates money for the purposes of the Corporation, such money shall be payable to the Corporation from time to time on the order of the Lieutenant-Governor in Council, upon the requisition of the Corporation, and this section shall have effect notwithstanding that there may be sums due from the Corporation to the Province, and notwithstanding anything contained in the *Financial Administration Act*.

1961-62, c.41, s.13; 1970, c.19, s.5; 1991, c.59, s.13.

13(1) All advances made by the Province to the Corporation after March 31, 1962, shall be made on such terms and conditions as may be agreed upon between the Corporation and the Minister of Finance, and without limiting the generality of the foregoing, the Corporation, in consideration of any advance, may

(a) issue and deliver to the Minister of Finance notes, bonds, debentures or other securities of the Corporation for the same principal amount, maturing on the same date, bearing interest at the same rate and payable as to both principal and interest in the same currency as the debentures or other securities of the Province issued for the purpose of raising the money advanced by the Province to the Corporation and containing such other terms and conditions, if any, as to redemption in advance of maturity or otherwise as the Minister of Finance may approve;

(b) agree to reimburse the Province all charges and expenses incurred or to be incurred by the Province in connection with the creation and issue of such debentures or other securities of the Province and the payment from time to time of the interest thereon and of the principal thereof, whether at maturity or on redemption prior to maturity and of the amount of the premium, if any, on redemption, and such other charges and expenses as the Province may incur.

13(2) The Corporation shall pay to the Province in each year in respect of sums advanced by the Province to the Corporation the amount of the sinking fund payment required to be made by the Province in each such year in respect of the debentures issued by the Province for the purpose of raising the sums so advanced.

1961-62, c.41, s.14; O.C.67-164; 1970, c.19, s.18; 1991, c.59, s.14.

14 The Corporation shall pay to the Minister of Finance, on due dates, such interest on the indebtedness of the Corporation to the Province for money advanced to the Corporation by the Province as may be sufficient to reimburse the Province the full amount of interest paid by the Province on money raised for the purposes of the Corporation and all charges incurred by it in providing such money.

1961-62, c.41, s.15; O.C.67-164; 1970, c.19, s.18; 1991, c.59, s.15.

15(1) Subject to the approval of the Lieutenant-Governor in Council, the Corporation may borrow from time to time, such sums of money as the Corporation may deem requisite for any of the purposes of the Corporation and may issue notes, bonds, debentures or other securities and the Corporation has power and is deemed always to have had power to make such securities bear such rate or rates of interest and make such securities payable as to principal and interest at such time or times and in such manner and at such place or places in Canada or elsewhere and in the currency of such country or countries as the Corporation, with the approval of the Lieutenant-Governor in Council may determine.

15(2) Any notes, bonds, debentures or other securities of the Corporation may be made redeemable in advance of maturity at such time or times and at such price or prices as the Corporation, with the approval of the Lieutenant-Governor in Council, may determine.

15(3) The purposes of the Corporation for which money may be borrowed include, without limiting the generality thereof, the following:

- (a) payment in whole or in part of any notes, bonds, debentures or other securities of the Corporation issued and delivered to the Minister of Finance in respect of any advances from the Province to the Corporation,
- (b) repayment on account of the advances by the Province to the Corporation,
- (c) payment, refunding or renewal from time to time of the whole or any part of any loan raised or securities issued by the Corporation under this or any other Act,
- (d) payment, refunding or renewal, from time to time of the whole or any part of any debentures or bonds issued by the Province for purposes of the Corporation,
- (e) payment of the whole or any part of any loans or of any liability or of any bonds, debentures or other securities, payment whereof is guaranteed or assumed by the Corporation,
- (f) payment of the whole or any part of any other liability or indebtedness of the Corporation, and
- (g) carrying out any of the powers and purposes of the Corporation providing in whole or in part for expenditures of the Corporation, made or to be made in connection therewith, reimbursing the Corporation for any such expenditures heretofore or hereafter made, and repaying in whole or in part any temporary borrowings of the Corporation for any of such purposes.

15(4) For the purposes specified in subsection (3) the Corporation may borrow and may issue securities as aforesaid in such amounts as will realize the net sum required by the Corporation for such purposes; and a recital or declaration in the resolution or minutes of the Corporation authorizing the issue of securities to the effect that the amount of securities so authorized is necessary to realize the net sum required for the purposes of the Corporation shall be conclusive of the fact.

15(5) The Corporation, on such terms and conditions as it deems advisable, may

- (a) sell or otherwise dispose of any such notes, bonds, debentures and other securities, and

(b) charge, pledge, hypothecate, deposit or otherwise deal with any such securities as collateral securities.

15(6) Any such securities dealt with as collateral security when redelivered to the Corporation or its nominees on or after payment, satisfaction, release or discharge in whole or in part of any indebtedness or obligation for which such securities may have been given as collateral, or when the Corporation again becomes entitled to such securities, may be treated by the Corporation as unissued and may be issued, re-issued, charged, pledged, hypothecated, deposited, dealt with as collateral security, sold or otherwise disposed of from time to time upon such terms and conditions as the Corporation may deem advisable, or at its option may be cancelled and fresh securities to the like amount and in like form may be issued in lieu thereof with the like consequences, and upon such issue or re-issue any person entitled thereto has the same rights and remedies as if the same had not been previously issued.

15(7) The Corporation, on such terms and conditions as it deems advisable, may charge, pledge, hypothecate, deposit or otherwise deal with as collateral security any bonds, debentures or other securities in which it has invested its funds.

15(8) The notes, bonds, debentures and other securities of the Corporation shall be in such form and shall be executed in such manner as the Corporation may determine.

15(9) The Corporation shall pay to the Minister of Finance such payments for sinking fund purposes as may be required by the terms of any bond or debenture issue and such funds shall be retained and invested for the account of the Corporation and be used by the Corporation to make payment at the maturity of any such bonds or debentures.

15(10) Notwithstanding anything contained in this Act, the Corporation may make such other provisions as may be approved by the Lieutenant-Governor in Council for sinking fund payments by the Corporation from time to time to the Minister of Finance, as Trustee for the Corporation, to be applied by the Corporation, prior to maturity, in repayment of the whole or any part of any securities to be issued by the Corporation, and for the application from time to time by the Minister of Finance on behalf of the Corporation of the whole or any part of such sinking fund and any interest earnings thereon to the purchase, and, in the case of securities issued subject to prior redemption in advance of maturity, to the redemption by call of such securities, and the Minister of Finance shall apply that sinking fund in accordance with the provisions so approved.

15(11) The Corporation may provide that the seal of the Corporation may be engraved, lithographed, printed or otherwise mechanically reproduced on any security to which it is to be affixed and that any signature upon any such security and upon the coupons, if any, attached thereto may be engraved, lithographed, or printed or otherwise mechanically reproduced thereon.

15(12) The seal of the Corporation when so mechanically reproduced shall have the same force and effect as if manually affixed and such mechanically reproduced signatures shall for all purposes be valid and binding upon the Corporation notwithstanding that any person whose signature is so reproduced has ceased to hold office before the date of the security or before the issue thereof.

1961-62, c.41, s.16; O.C.67-164; 1970, c.19, s.18; 1973, c.74, s.30; 1991, c.59, s.16.

16(1) The Lieutenant-Governor in Council is authorized on such terms as may be approved by Order-in-Council, to guarantee the payment of the principal of and interest on, and any premium on redemption in advance of maturity or other obligation for the payment of money provided for or contained in, any bonds, debentures or other securities issued by the Corporation, and the form and manner of any such guarantee or guarantees shall be such as the Lieutenant-Governor in Council may approve, and the guarantee or guarantees shall be signed by the Minister of Finance, or such other officer or officers as may be designated by the Lieutenant-Governor in Council, and upon being so signed, the Province shall become liable for the payment of the principal of and interest on, and any

premium on redemption in advance of maturity or other obligation for the payment of money, provided for or contained in the bonds, debentures and securities guaranteed, according to the tenor thereof, and the Lieutenant-Governor in Council is authorized to make arrangements for supplying the money necessary to fulfil the requirements of the guarantee or guarantees, and to advance the amount necessary for that purpose, out of the Consolidated Fund of the Province and, in the hands of any holder of any such bonds, debentures or securities, any guarantee so signed shall be conclusive evidence that the terms of this section have been complied with.

16(2) The signature of the Minister of Finance or such other officer or officers as may be designated by the Lieutenant-Governor in Council under subsection (1) on the guarantee or guarantees referred to in subsection (1) may be engraved, lithographed, printed or otherwise mechanically reproduced and such mechanically reproduced signature has the same force and effect as if manually affixed and is valid and binding notwithstanding that the person whose signature is so reproduced ceased to hold office before the date of the security or before the issue thereof.

1961-62, c.41, s.17; O.C.67-164; 1970, c.19, s.18; 1973, c.32, s.1; 1985, c.11, s.3; 1991, c.59, s.17.

17(1) The Lieutenant-Governor in Council may, on behalf of the Province, enter into any covenants or agreements in connection with the acquisition by the Corporation of any shares in any corporation, and guarantee the observance and performance by the Corporation of any contract or agreement of the Corporation in relation to such acquisition.

17(2) Subject to the approval of the Lieutenant-Governor in Council, the Corporation may from time to time subscribe for, acquire by purchase or otherwise and hold shares or stock in or the securities of

(a) any corporation incorporated for the purpose of carrying on the business of generating, transmitting or distributing power, or

(b) any corporation controlled by the Corporation jointly with any other corporation or corporations whose purposes and objects are substantially similar to those of the Corporation, or which is an agency of the Crown in right of the Province,

and in connection with any such acquisition enter into any covenants and agreements and pay for any such shares either in cash or in bonds, debentures or other securities of the Corporation, and guarantee, or covenant or agree for or in respect, of the payment or performance of any bonds, debentures, securities, contracts or obligations of any corporation, shares in which are so acquired.

17(3) Except as provided in subsection (2), the Corporation shall not enter into any contract for the acquisition of shares or stock in a corporation unless the contract is for a majority of the shares of such corporation.

1961-62, c.41, s.18; 1970, c.19, s.6; 1977, c.19, s.4; 1991, c.59, s.18.

18(1) Subject to the approval of the Lieutenant-Governor in Council, the Corporation may, from time to time, borrow or raise money for temporary purposes by way of overdraft, line of credit, or loan, or otherwise upon the credit of the Corporation in such amounts, not exceeding in the aggregate of principal outstanding at any one time, fifty per cent of the previous fiscal year's total revenue of the Corporation, upon such terms, for such periods, and upon such other conditions, as the Corporation may determine.

18(2) For the purposes of subsection (1), the Corporation may pledge, as security, notes, bonds, debentures or other securities of the Corporation pending the sale thereof or in lieu of selling the same, or may pledge as security, bonds, debentures or other securities owned by the Corporation, or otherwise give such security as the Corporation may determine and any cheques, promissory notes, or other instruments that may be necessary or desirable for the purposes of subsection (1) or this subsection may be executed in such manner as the Corporation may determine.

18(3) The Lieutenant-Governor in Council may guarantee the repayment of advances made by banks, or any other indebtedness incurred by the Corporation.

1961-62, c.41, s.19; 1970, c.19, s.7; 1991, c.59, s.19.

19 The Corporation may, from time to time, invest any surplus funds temporarily held by it in

(a) deposit receipts, bearer deposit notes, certificates of deposit, swap deposits, bankers acceptances and other similar instruments issued, endorsed or guaranteed by any Canadian chartered bank, or

(b) treasury bills or other evidences of indebtedness of or guaranteed by Canada or any province of Canada,

having a term to maturity of less than one year.

1961-62, c.41, s.20; 1970, c.19, s.8; 1985, c.11, s.4; 1991, c.59, s.20.

20 The charges, rates and tolls to be charged by the Corporation shall be such as will enable it, in addition to paying all operating charges and expenses, overhead interest and amortization charges,

(a) to provide for the renewal, reconstruction, expansion, alteration and repair of the works constructed and operated by the Corporation,

(b) to meet interest upon working capital and for the operations of the Corporation under this Act and to meet obligations, charges, salaries and expenses arising in the course of such operation,

(c) to meet any unforeseen expenditures or costs caused by the destruction or injury of any of the works of the Corporation or otherwise incurred or payable by the Corporation, and

(d) to maintain such reserve, depreciation and surplus accounts as are maintained by a properly managed corporation.

1961-62, c.41, s.21; 1987, c.6, s.22; 1989, c.59, s.9; 1991, c.59, s.21.

21 The fiscal year of the Corporation terminates on the thirty-first day of March in each year.

1961-62, c.41, s.22; 1991, c.59, s.22.

22(1) The Corporation has power

(a) to construct, maintain and operate works for generating electrical energy from water power, coal, peat, gas, oil or by any other means, and for transmitting the same;

(b) to construct, maintain, and operate dams, sluices, canals, raceways and other works upon, through, over, under, along and across any public land, public highway, or public place, any stream, water course, bridge, viaduct, or railway, and with or without the consent of the owner thereof to flood and overflow any land, and to do all such acts, matter and things as it deems necessary for the purpose of providing storage of water, or for any other purpose in connection with such works;

(c) to purchase or lease, or by other non-compulsory means, acquire, or without the consent of the owner thereof, take and expropriate,

(i) land, water, water power, water privilege and works, developed, operated, used or adapted for generating electrical energy by any means from any source of power, and for the transmission of such energy,

- (ii) land upon which any water power or water privilege is situate, and any land and any river, stream or other body of water that the Corporation deems is capable of improvement or development, for the purpose of providing water power,
- (iii) land that the Corporation deems necessary for the full enjoyment and exercise of any water power, water privilege or works of the Corporation,
- (iv) land, mines, quarries and wells producing or capable of producing coal, peat, gas, oil or any other material, adapted or adaptable for the generation of electrical energy,
- (v) property of every description that the Corporation deems useful for the purpose of generating, transmitting or distributing electrical energy,
- (vi) coal, peat, gas and oil,

and use or develop the same for the purpose of generating, transmitting and distributing electrical energy;

(d) to purchase, lease or by other non-compulsory means acquire, any property that the Corporation deems necessary, convenient or advisable to acquire for or incidental to the exercise of its powers;

(e) to sell and dispose of any property that is found to be unnecessary for its purposes;

(f) to grant any estate, term, easement, right or interest in, or over, or affecting any part of its property;

(g) to contract with any person generating, transmitting or distributing electrical energy, or proposing to do so, for a supply of electrical energy to the Corporation and to require any person generating or distributing electrical energy to supply to the Corporation so much thereof as it requests;

(h) to contract for the use by any person of any property of the Corporation on such terms and conditions as are agreed upon, and to make such charge for the use of such property as the Corporation deems reasonable;

(i) to agree with the owner of any property acquired or damaged or injuriously affected by the Corporation by the exercise of any of the compulsory powers of the Corporation as to the price payable for the property acquired and as to the amount of compensation payable for such damage or injurious affection.

22(2) Repealed: 1989, c.59, s.9.

22(3) Notwithstanding the general powers conferred upon the Corporation by this section but subject to subsection (4), the Corporation shall not exercise any of the powers set out in paragraph (1)(b) with respect to any works, which works or any part thereof, or any flooding or overflowing occasioned thereby, may constitute an obstruction to the construction, improvement, maintenance or repair of any public land, public highway, public place, bridge, viaduct, or railway, or the normal use thereof, unless it first makes a report to the Minister of Transportation of the nature of the proposed work and its possible effect, and provides him with plans of the proposed work, or such part thereof, and the Minister has given his written consent to the construction, maintenance and operation of such works, or such part thereof.

22(4) If any public land, public highway, public place, bridge, viaduct or railway referred to in subsection (3) is under the administration and control

(a) of the New Brunswick Highway Corporation, the report shall be made to, the plans shall be provided to and the consent shall be given by that Corporation and subsection (3) applies with any other necessary modifications, and

(b) of a project company as defined in the *New Brunswick Highway Corporation Act*, the report shall be made to, the plans shall be provided to and the consent shall be given by that project company and subsection (3) applies with any other necessary modifications.

22(5) Notwithstanding the general powers conferred upon the Corporation by this section, the Corporation shall not

(a) exercise the powers set out in paragraph (1)(c) to take and expropriate against a person referred to in paragraph 32(1)(a), (b) or (c); or

(b) exercise the powers set out in paragraph (1)(g) to require a person referred to in paragraph 32(1)(a), (b) or (c) to supply so much electric power to the Corporation as it requests.

1961-62, c.41, s.24; 1970, c.49, s.9; 1973, c.6, s.57; 1982, c.3, s.18; 1989, c.59, s.9; 1991, c.59, s.23; 1995, c.N-5.11, s.40; 1997, c.64, s.18; 2002, c.5, s.1.

22.1(1) In this section

"project company" means a person designated by resolution of the board of directors as a person with whom the Corporation may enter into a contract for the refurbishment of existing generating facilities or the construction of new generating facilities for the use of natural gas in the generation of electricity where the risks of capital funding and marketing are borne by the project company.

22.1(2) Notwithstanding the *Crown Construction Contracts Act* and the *Public Purchasing Act* and the regulations under either of those Acts, those Acts and regulations do not apply to

(a) any contract between the Corporation and a project company,

(b) any contract between a project company and a person other than the Corporation that relates to a contract between the Corporation and the project company, and

(c) the purchase of supplies or services made by or other transactions carried out by a project company in relation to an agreement between the Corporation and the project company.

22.1(3) Where a person is designated by resolution of the board of directors under subsection (1), a certified copy of the resolution shall be published in *The Royal Gazette* within thirty days of the passing of the resolution but failure to do so shall not affect the status of a project company.

1999, c.19, s.1.

23(1) Where land is proposed to be taken for the use of the Corporation, the procedure followed shall be that set out in the *Expropriation Act*.

23(2) Where property, other than land is proposed to be taken for the use of the Corporation, and no transfer thereof is effected by the person having the power to make such transfer or where a person interested in such property is incapable of making such transfer, or where for any other reason the Corporation deems it advisable to do so, a notice specifying generally such property, signed by the Chairman of the board of directors of the Corporation, the President of the Corporation or any other officer of the Corporation, shall be filed in the Registry Office for the county in which the property is situated and upon the filing of such notice, the title to such property vests in the Corporation.

23(3) Where any property other than land, proposed to be taken, is required for a limited time only, or where only a limited estate, right or interest therein is required, the notice so filed shall indicate by appropriate words that the property is taken for such limited time only, or that only such limited estate, right or interest therein is taken, and upon the filing of such notice in such case the right to possession for such limited time or to such limited estate, right or interest vests in the Corporation.

23(4) Within thirty days after the filing of the notice under subsection (2), the Corporation shall serve personally upon the owner of the property or shall publish once a week for three consecutive weeks, and at least once during the thirty days, in a newspaper having a general circulation in the county in which the property is situated, a notice

- (a) describing the property taken and any limitation in the interest therein taken,
- (b) setting out the date of the filing of the notice under subsection (2), and
- (c) stating that the Corporation will pay compensation therefor.

23(5) In case of any omission, misstatement or erroneous description in a notice, a correct notice may be filed with like effect.

23(6) Where a notice purporting to be signed by the Chairman of the board of directors of the Corporation, the President of the Corporation, the Chief Executive Officer of the Corporation or any other officer of the Corporation is so filed, the same shall be deemed to have been so filed by the direction and authority of the Corporation.

1961-62, c.41, s.25; 1973, c.6, s.57; 1977, c.19, s.5; 1991, c.59, s.24; 1993, c.55, s.3.

24(1) When a notice referred to in section 23 is filed in the manner set out for filing, the property vests in the Corporation, and the Corporation may immediately take possession of and use the property, notwithstanding that the amount of compensation has neither been agreed upon nor determined.

24(2) The right to enter upon, take possession of, use and enjoy land that has been expropriated by the Corporation shall be determined in accordance with the *Expropriation Act*.

24(3) The right to enter upon, take possession of, and use and enjoy any property includes the right to enter upon any other land adjoining lands acquired for the transmission or distribution lines or any other works of the Corporation, and to fell or remove any trees and any branches of any trees, or any other obstruction upon such land or upon any public highway or place, which the Corporation deems necessary to fell or remove, but always to the payment of compensation as provided in section 27.

1961-62, c.41, s.26; 1970, c.19, s.10, 11; 1973, c.6, s.57; 1977, c.19, s.6; 1991, c.59, s.25.

25 The Corporation may, by its engineers, agents, workmen, and servants, enter into and upon any land, to whomsoever belonging, and without the consent of the owner

- (a) survey and take levels of the same and run lines or make borings or sink such trial or test pits or holes as it deems necessary for any of the purposes of the Corporation,
- (b) cut down any trees that might, in the opinion of its agents, in falling or otherwise endanger the conductors, wires, or equipment or works of the Corporation or that may obstruct the running of survey lines,
- (c) make and use all such temporary roads, to and from its survey lines and plants as are required by it for the convenient passing to and from its survey lines and works, and

(d) construct, install, maintain, read, inspect, repair and remove any meters, installations or works of the Corporation.

1961-62, c.41, s.27; 1991, c.59, s.26.

26 Where resistance or opposition is made by any person to the Corporation entering upon land and taking possession of, or using or enjoying any property acquired by it, or exercising any of its powers with respect to any property,

(a) a judge of The Court of Queen's Bench of New Brunswick may

(i) in the case of land, on proof of the execution of a conveyance of such land to the Corporation, or of an agreement for the conveyance thereof, or of the right of the Corporation to possession of the land in accordance with the *Expropriation Act*,

(ii) in the case of property other than land, on proof of the effecting of a transfer thereof to the Corporation or of an agreement for the transfer thereof or of the filing of a notice of the taking thereof under section 23,

(iii) in the case of any entry or attempted entry into land under section 25 hereof on proof by affidavit of the purpose of such entry and of the resistance, obstruction or opposition to such entry or accomplishment of such purpose,

and after due notice to show cause given in such manner as he prescribes, issue his warrant to the Sheriff for the judicial district within which such property is situated, directing him to put down such resistance or opposition, and to put the Corporation, or some person acting for the Corporation, in possession of the property, or do such acts or things as may be necessary to enable the Corporation to exercise its powers with respect to the property, and

(b) the Sheriff shall take with him sufficient assistance for such purpose and shall put down such resistance or opposition and put the Corporation in possession of the property, or do such acts or things as may be necessary to enable the Corporation to exercise its powers with respect to the property, and forthwith make return to the Judge of the warrant and of the manner in which he executed the same.

1961-62, c.41, s.28; 1973, c.6, s.57; 1979, c.41, s.44; 1988, c.42, s.23; 1991, c.59, s.27.

27(1) The Corporation shall make to the owner of property acquired by it or injuriously affected by the exercise of any of its compulsory powers conferred by this Act, due compensation for the property acquired and for any damage resulting from the exercise of such powers.

27(2) Where the Corporation and the owner cannot agree on the amount of compensation to be paid by the Corporation, the amount shall be determined in accordance with the *Expropriation Act*.

1961-62, c.41, s.29; 1970, c.19, s.12; 1973, c.6, s.57; 1991, c.59, s.28.

28 The *Proceedings Against the Crown Act* applies to all actions or claims against the Corporation except claims to which the *Expropriation Act* applies.

1961-62, c.41, s.32; 1963(2nd Sess.), c.19, s.1; 1973, c.6, s.57; 1991, c.59, s.29.

29(1) Notwithstanding anything in this or any other Act contained, no claim shall be made against the Corporation for damage to crops, shrubs, trees or other growing things or to land caused by or incidental to clearing of rights-of-way for transmission or distribution line of the Corporation or to construction, maintenance or repair of poles, wires, towers or works included in or connected with transmission or distribution lines unless notice of such claim has been given to the Corporation in writing signed by the claimant not later than sixty days after the cause for complaint arose.

29(2) If a claim is made against the Corporation after the time limited hereby, the Corporation, if satisfied that it has not been prejudiced by such delay, may waive the provisions of this section as to notice.

1961-62, c.41, s.32A; 1970, c.19, s.14; 1991, c.59, s.30.

30 The compensation agreed upon or determined for any property acquired by the Corporation in the exercise of any of the powers conferred by this Act shall stand in the stead of that property, and any claim to or encumbrances thereon, shall, as respects the Corporation, be converted into a claim to or upon such compensation, or to a proportionate amount thereof and shall be void as respects any property so acquired.

1961-62, c.41, s.33; 1973, c.6, s.57; 1991, c.59, s.31.

31(1) Compulsory powers conferred by this Act extend to all property notwithstanding that the same is or may be deemed to be devoted to a public use, or that the owner thereof possesses the power of expropriating property.

31(2) Notwithstanding anything contained in any other Act of the Legislature, a grant under the Great Seal of the Province of any Crown land, required by the Corporation for transmission lines, may be issued to the Corporation upon payment by the said Corporation of such price for such lands as may be determined by the Lieutenant-Governor in Council.

1961-62, c.41, s.34; 1991, c.59, s.32.

32(1) Notwithstanding any Act of the Legislature passed before or after March 8, 1953, or the charter of any corporation granted before or after that date, or any contract or franchise entered into or granted before or after that date, no person other than the Corporation shall supply or sell electric power in any municipality or in any locality without first having obtained the approval of the Lieutenant-Governor in Council to do so, unless

(a) on March 1, 1962, the person was so supplying or selling electric power in that municipality or locality;

(b) the person is supplying or selling electric power to the Corporation, or

(c) the person is supplying electric power to a single site for that person's own use.

32(2) Where a person supplying or selling electric power in a municipality or a locality on March 1, 1962, subsequently ceases to supply or sell electric power in that municipality or locality, that person shall not again, nor shall any other person, supply or sell electric power in that municipality or locality without having first obtained the approval of the Lieutenant-Governor in Council to do so.

32(2.1) Subsection (2) does not apply to paragraph (1)(b) or (c).

32(3) Repealed: 2002, c.5, s.2.

32(4) No corporation shall extend its services of electric energy to any person or into any area or district until permission in writing has been obtained from the Corporation for such extension.

32(5) The Corporation is hereby empowered to require any corporation to extend its service of electric energy to any person or district without such service, if it appears to the Corporation that after such service has been extended as required, there will be a reasonable return to the corporation upon the capital invested in the whole electrical undertaking of the corporation.

32(6) The Corporation may

(a) regulate and fix the price at which electrical energy supplied by the Corporation may be resold or distributed by any person, and

(b) prescribe standards of construction and service for the sale, resale or distribution of such energy.

1961-62, c.41, s.35; 1970, c.19, s.15; 1970, c.20, s.1, 2; 1989, c.59, s.9; 1991, c.59, s.33; 2002, c.5, s.2.

33 Where any person, indebted to the Corporation in an amount in excess of one thousand dollars, has or is likely to have money owing to him by Her Majesty in the right of the Province of New Brunswick, the Chief Financial Officer of the Corporation or such other person as may be designated by the Corporation may notify the Minister of Finance in writing of such indebtedness and request the Minister of Finance to deduct the amount of such indebtedness to the Corporation from money so owing by Her Majesty and pay over the same, or the entire amount so owing if the indebtedness to the Corporation exceeds the amount so owing by Her Majesty to the Corporation and such payment shall constitute a discharge of the claim of such person against Her Majesty to the extent of such payment.

1961-62, c.41, s.36; O.C.67-164; 1970, c.19, s.18; 1977, c.19, s.7; 1991, c.59, s.34.

34 Neither the President of the Corporation, the Chief Executive Officer of the Corporation, the Chairman of the board of directors nor any director or officer of the Corporation, nor anyone acting under the instructions of any of them or of the Corporation, or under the authority of this Act or the regulations, shall be personally liable for any loss or damage suffered by any person by reason of anything in good faith done, or omitted to be done, by him or them, pursuant to or in the exercise or supposed exercise of the power given to him or them by this Act.

1961-62, c.41, s.37; 1991, c.59, s.35; 1993, c.55, s.4.

35 No injunction and no order on judicial review may issue against the Corporation, its directors, officers, agents or employees relating to any act done, proposed to be done or omitted to be done by it or them pursuant to or in exercise or supposed exercise of the power given to it or them by this Act.

1961-62, c.41, s.38; 1973, c.74, s.30; 1986, c.4, s.16; 1991, c.59, s.36.

36 Where easements or right of way agreements that permit or provide for the right to lay or maintain underground cable or conduits are recorded in the appropriate record office by way of expropriation proceedings or recorded agreements or otherwise, no person shall have any right of action or seek to enforce any claim against the Corporation, its directors, agents, or employees for damages suffered, resulting directly or indirectly from any underground conductor or cable maintained in accordance with the terms of such registered easement, whether by reason of interference by anyone with such cable or conductor or otherwise, and any person damaging or interfering with such cable or conductor shall be liable to the Corporation for damages or loss suffered by the Corporation by reason of such damage or interference.

1961-62, c.41, s.39; 1991, c.59, s.37.

37 Neither the Corporation nor any director thereof shall incur any liability by reason of any error or omission in any estimates, plans or specifications prepared or furnished by the Corporation.

1961-62, c.41, s.40; 1991, c.59, s.38.

37.1 Any contract for the supplying by the Corporation of power shall be deemed to provide that the Corporation shall not be liable for damages in respect of any abnormality, delay, interruption or other partial or complete failure in the said supplying when such damages are caused by something that is beyond the ability of the Corporation to control by reasonable and practicable effort.

1977, c.19, s.8; 1991, c.59, s.39.

37.2(1) Notwithstanding this Act or any other Act, where works of the Corporation have been affixed to realty, they remain subject to the rights of the Corporation as fully as they were before being so affixed and do not become part of the realty unless otherwise agreed by the Corporation in writing.

37.2(2) The Corporation may by its officers and employees enter upon the premises of customers to inspect service conditions, read meters and, when service is discontinued, to remove meters and other equipment belonging to the Corporation.

1977, c.19, s.8; 1991, c.59, s.40.

37.3 Every person who, without the consent of the Commission, nails or otherwise attaches anything, or causes anything to be nailed or otherwise attached to or upon any property of the Commission is guilty of an offence and is liable on summary conviction to a fine of not less than ten dollars and not more than twenty dollars.

1977, c.19, s.8.

37.4 If any person, firm or corporation supplied with power by the Corporation fails to pay the amount due for the power within the period of one month after the amount becomes due, the Corporation may stop the supply of power from entering the premises of such person, firm or corporation by cutting off the supply wire or by such means as the Corporation thinks fit, and may recover the amount due from such person, firm or corporation up to such time, together with the expenses of cutting off the power, in any competent court, notwithstanding any contract to furnish for a longer period.

1977, c.19, s.8; 1991, c.59, s.41.

38 The Corporation shall, before the first day of July in each year, make to the Lieutenant-Governor in Council a clear and comprehensive report disclosing and exhibiting its assets and liabilities as at the preceding thirty-first day of March and the results from its operations for the fiscal year ended on that date.

1961-62, c.41, s.41; 1991, c.59, s.42.

39 The accounts of the Corporation shall, from time to time and at least once every year, be audited by an auditor appointed by the Lieutenant-Governor in Council.

1961-62, c.41, s.42; 1970, c.19, s.16; 1991, c.59, s.43.

40 When required by the Lieutenant-Governor in Council the Corporation shall make investigation and collect and record data concerning the power industry and its relation to other industries, and concerning the location, capacity, development, costs and relation to markets of power sites and of power developments with such other information as the Lieutenant-Governor in Council may require.

1961-62, c.41, s.43; 1991, c.59, s.44.

40.1(1) The Corporation shall, in accordance with the regulations, pay annually to the Minister of Finance a fee or fees in respect of

- (a) guarantees given by the Lieutenant-Governor in Council under this Act, and
- (b) sums advanced or applied under section 11.

40.1(2) The Lieutenant-Governor in Council may make regulations

- (a) respecting the calculation of the fee or fees referred to in subsection (1);

(b) respecting the manner in which and the time at which the fee or fees referred to in subsection (1) are to be paid.

40.1(3) The fee or fees referred to in subsection (1) apply to guarantees given and to sums advanced or applied before this subsection comes into force as well as to those given, or advanced or applied after this subsection comes into force.

1988, c.10, s.1; 1991, c.59, s.45.

41(1) In the exercise of the powers conferred and in carrying out any work authorized by this Act or any other general or special Act, the Corporation has and always has had authority to put down, carry, construct, erect and maintain such conduits, wires, poles, towers and other equipment and works used in the generation, transmission and distribution of electrical power and energy as it deems necessary or desirable, under, along, across or upon any public street or highway and to remove or replace them without taking any of the proceedings prescribed by this Act for the taking of land without the consent of the owner thereof, and the provisions of this Act with regard to compensation for lands so taken do not apply, but the location of any such conduits, wires, poles, towers, equipment or works to be put down, carried, constructed or erected under, along, across or upon a public street or highway shall be agreed upon by the Corporation and the municipal corporation or other authority having control of the public street or highway, and in case of disagreement shall be determined by the Lieutenant-Governor in Council.

41(2) Where, for the purpose of widening, changing the course or improving any public highway, street, lane, or other public place, it is necessary to take up, remove, or change the location of any of the works of the Corporation constructed or placed on, under, over, across, or along a public highway, street, lane or other public place the responsible authority proposing to make such alterations or improvements shall notify the Corporation of its intentions, specifying the alteration or change of location of the Corporation's facilities necessitated thereby, and the costs and expenses incurred thereby shall be apportioned between the Corporation and the Municipality, or other authority, other than the Department of Transportation, the New Brunswick Highway Corporation and a project company as defined in the *New Brunswick Highway Corporation Act*, making the improvement, in such proportion as they may agree upon, or in case of disagreement shall be apportioned by the Lieutenant-Governor in Council.

41(3) Where any public highway, street, lane, or other public place, or any part thereof, on, under, over, across, or along which any works of the Corporation have been constructed or placed is closed by Her Majesty or by any municipality or other authority, the Corporation may leave its works in place and has the same rights with respect thereto as though the public highway, street, lane, or other public place, or part thereof, had not been closed.

41(4) Where any wires, anchors, cross arms, or equipment attached to poles of the Corporation on, under, over, across, or along any public highway, street, lane or other public place, project over land adjoining the public highway, street, lane or other public place, the Corporation is liable only for actual physical damage, if any, caused thereby.

1961-62, c.41, s.44; 1970, c.19, s.17; 1982, c.3, s.18; 1991, c.59, s.46; 1995, c.N-5.11, s.40; 1997, c.64, s.18.

POWER EMERGENCY

42(1) Where at any time the Lieutenant-Governor in Council is of opinion that a state of emergency exists or has existed by reason of any actual or apprehended damages to, destruction, failure, or breakdown of, any works, any wastage of power, power demand in excess of power resources, or any other matters restricting, or that may restrict the delivery of power, Her Majesty may, by proclamation issued by the Lieutenant-Governor pursuant to order of the Lieutenant-Governor in Council, declare that a state of emergency exists or has existed; and, in that event and during the continuance of the state of emergency, and until Her Majesty, by proclamation issued by the Lieutenant-Governor

pursuant to order of the Lieutenant-Governor in Council, declares the cessation of state of emergency, and notwithstanding this Act or any general or special Act or any contract entered into or assumed by the Corporation, or the responsibility for the performance, implementation of which is an obligation of the Corporation, any contract made by any person to whom the Corporation supplies power, the Corporation may, by order or regulation,

(a) allocate and distribute power, establish preferences and priorities between different users, and class of users, of power, and interrupt or decrease delivery of power under any contract, and

(b) regulate, restrict, prohibit, and control, the generation, transformation, transmission, distribution, supply and use of power

in order to effect what is, in the opinion of the Corporation the most economical, efficient, and equitable use and distribution of power.

42(2) During the state of emergency, the Corporation may at any time modify, restrict, rescind, suspend, or re-impose any order, regulation, restriction, prohibition, or control, given, made, or exercised under subsection (1).

42(3) During the state of emergency, the Corporation may order the cessation, interruption, or decrease of delivery of power, in such manner and to such extent as it sees fit, to any person who fails to comply with any order, regulation, restriction, prohibition, or control given, made, or exercised by the Corporation under this section, and may enforce the order by all such reasonable means as it may deem proper; and may enter, or authorize the entering upon, the land of any person and do, or authorize to be done, whatever is necessary for that purpose.

42(4) During the state of emergency any person distributing or supplying power may cease, interrupt, or decrease the delivery of power in such manner, to such extent, and by such means as he sees fit, to any of his customers who fail to comply with any order, regulation, restriction, prohibition, or control given, made, or exercised by the Corporation under this section and he may enter, or authorize the entering upon, any land of any such customer, and do, or authorize to be done, whatever is necessary for that purpose.

42(5) Nothing lawfully done under this section or under order, regulation, restriction, prohibition, or control made or exercised by the Corporation under this section, or done to enforce or give effect thereto by the Corporation, its servants, agents, or by any person or his servants or agents, shall be deemed to be a breach of contract by the Corporation or any such person or entitle any person to rescind any contract or release any guarantor from the performance of his obligations, or render the Corporation, its servants or agents, or any such person, its or his servants or agents, liable in any action-at-law or other legal proceedings for damages or otherwise.

42(6) A person who refuses or neglects to comply with any order, regulation, restriction, prohibition or control made or exercised by the Corporation under this section commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category F offence.

42(7) Where an offence under subsection (6) continues for more than one day,

(a) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* multiplied by the number of days during which the offence continues, and

(b) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* multiplied by the number of days during which the offence continues.

1961-62, c.41, s.45; 1990, c.61, s.40; 1991, c.59, s.47.

N.B. This Act is consolidated to March 31, 2002.